

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Argos Net, Inc.)	File No: EB-11-SJ-0055
)	File No: EB-11-SJ-0062
Caguas, PR)	NAL/Acct. No.: 201232680002
)	FRN: 0021525951

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 2014**Released: February 7, 2014**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, issued pursuant to Section 405 of the Communications Act of 1934, as amended (Act),¹ and Section 1.106 of the Commission's rules (Rules),² we grant in part and deny in part the petition for reconsideration (Petition) filed by Argos Net, Inc. (Argos Net), an operator of Unlicensed National Information Infrastructure (U-NII) transmission systems in Puerto Rico.³ Argos Net seeks reconsideration of the *Forfeiture Order* issued by the Enforcement Bureau's South Central Region in this proceeding.⁴ The *Forfeiture Order* imposed a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) against Argos Net for willfully and repeatedly violating Section 301 of the Act.⁵ The noted violations involved Argos Net's operation of intentional radiators not in accordance with Part 15 of the Rules⁶ and without a license. As discussed below, we uphold the Bureau's prior finding of violation, but reduce the forfeiture to \$12,000.

II. BACKGROUND

2. Argos Net does not dispute the violations but requests that the Commission reduce further the forfeiture amount. Argos Net asserts that it cooperated fully with the investigation and helped Commission agents identify the operators of other U-NII devices in the area. Accordingly, it requests a downward adjustment on the basis of good faith and voluntary disclosure of information. Argos Net also states that the Commission has taken into consideration a violator's operations, market competition, and profitable history in order to determine the reasonableness of a proposed forfeiture. Argos Net claims that with its operating deficit and current debt obligations, payment of \$20,000 would "impose further burdens

¹ 47 U.S.C. § 405.

² 47 C.F.R. § 1.106.

³ See Letter from Edwin Quinones, Esq., Counsel for Argos Net, Inc., to Federal Communications Commission (rec. Mar. 12, 2013) (Petition) (on file in EB-11-SJ-0055 and EB-11-SJ-0062).

⁴ See *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013) (*Forfeiture Order*).

⁵ 47 U.S.C. § 301.

⁶ 47 C.F.R. §§ 15.1 *et seq.*

on its already delicate financial situation and operations” and requests further reduction of the forfeiture. To support its request, Argos Net provides new documentation regarding its finances for 2012.

III. DISCUSSION

3. Petitions for reconsideration are granted only in limited circumstances. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order, or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.⁷ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.⁸ As discussed below, we find that Argos Net has provided updated financial information, which prompts us to reduce the forfeiture to \$12,000.

4. Generally, the Commission has found that “a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.”⁹ The Commission, citing *PJB Communications*, has also held that “[i]f gross revenues are sufficiently great . . . the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture.”¹⁰ Such is the case here. As Argos Net notes,¹¹ the Commission in *First Greenville Corp.* looked to other factors, including profits and losses, to determine ability to pay.¹² That case, however, involved a licensee in severe financial distress that remained in business only because of substantial financial support from the licensee’s sole shareholder.¹³ Argos Net has failed to demonstrate that it is experiencing a comparable level of financial distress or that it otherwise should qualify for an exception to our gross revenues policy. For example, unlike *First Greenville Corp.*, Argos Net has not indicated that it is unable to secure funding to cover its losses, or that its owners have personally guaranteed loans on its behalf.¹⁴ However, a review of the updated financial information provided by Argos Net in response to the *Forfeiture Order* convinces us that reduction of the

⁷ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)); see also *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012) (providing standard of review for petitions for reconsideration).

⁸ *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, para. 2.

⁹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17106, para. 43 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*) (citing *PBJ Communications*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, para 8 (1992)). See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corp.*, Forfeiture Order, 14 FCC Rcd 3356 (Compl. & Inf. Bur. 1999), *aff’d by* Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

¹⁰ *Forfeiture Policy Statement*, 12 FCC Rcd at 17106, para. 43 (citing *PBJ Communications*, 7 FCC Rcd at 2089, para 8).

¹¹ Petition at 4.

¹² *First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996) (*First Greenville Corp.*).

¹³ *Id.*

¹⁴ *Cf. id.*, 11 FCC Rcd at 7403, para. 13 (considering that the station’s losses exceeded its income and that the sole shareholder had funded those losses and received no income from the station when reducing proposed forfeiture).

forfeiture to \$12,000 is warranted.¹⁵ Accordingly, we grant in part the petition for reconsideration filed by Argos Net and reduce the forfeiture to \$12,000 on the basis of inability to pay.¹⁶

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁷ and Section 1.106 of the Commission's rules,¹⁸ that the Petition for Reconsideration filed by Argos Net, Inc. **IS GRANTED IN PART AND DENIED IN PART**.

6. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,¹⁹ Argos Net, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violation of Section 301 of the Act.²⁰

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Memorandum Opinion and Order.²¹ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²² Argos Net, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made.

8. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

¹⁵ This forfeiture amount falls within the percentage range that our precedents have found acceptable. *See supra* note 9. If Argos still believes paying this amount presents financial difficulties, we note that it could always pursue an installment plan to lessen the immediate impact of the forfeiture. *See infra* para. 9.

¹⁶ Argos Net also argues for a reduced forfeiture based on good faith and voluntary disclosure of information. Because we are already reducing the forfeiture based on Argos Net's inability to pay well beyond any reduction it would receive for its other arguments, we need not address these other claims.

¹⁷ 47 U.S.C. § 405.

¹⁸ 47 C.F.R. § 1.106.

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁰ 47 U.S.C. § 301.

²¹ 47 C.F.R. § 1.80.

²² 47 U.S.C. § 504(a).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

10. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Argos Net, Inc. at Oficina #212, Calle Acosta #32, Caguas, PR, 00725 and to its counsel, Edwin Quinones and Alejandro J. Figueroa Ramirez, Quinones & Arbona, P.O. Box 19417, San Juan, PR 00910.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.